

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4313 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos.1 to 5 No.

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ISMAOLSHA ALIAS KALIA HAJISHA FAKIR

Versus

POLICE COMMISSIONER

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Appearance:

MR YS LAKHANI for Petitioner

MR.NEEGAM SHUKLA, AGP for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 28.4.1996 passed by the Police Commissioner, Rajkot City detaining the petitioner under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 28.4.1996 itself and since then the petitioner is under detention lodged at Porbandar Jail, Porbandar.

The present Special Civil Application was filed on 24.6.1996 and on 25.6.1996 Rule returnable for 22.7.1996 was issued. So far neither any reply has been filed nor any affidavit of the Detaining Authority has been filed. The grounds enclosed with the detention order show that 7 criminal cases were registered against the petitioner for the offences under the Prohibition Act. The Detaining Authority has taken into consideration the statements made by three witnesses against the petitioner's antisocial, criminal and bootlegging activities made on 23.4.1996. The Detaining Authority has found that the petitioner is bootlegger and was engaged in unauthorised business of liquor. The Detaining Authority has also mentioned that the proceedings of the externment may not serve any purpose and the petitioner has not restrained himself from continuing his antisocial activities. The detention order is passed to prevent the petitioner from continuing his antisocial activities.

The learned counsel for the petitioner has challenged the detention order on more than one grounds but stress was laid on the point that the allegations and the materials on the basis of which the detention order has been passed against the petitioner do not make out any case of breach of public order and at the most it can be said to be a case of the breach of law and order. Strong reliance has been placed on the Supreme Court decision in the case of M.J.Shaikh Vs. M.M.Mehta, reported in 1995 (2) GLR Pg.1268.

In view of the reasons given in the judgment dated 4.10.1996 in Special Civil Application No. 3879 of 1996 it is clear that the allegations and materials relied upon by the Detaining Authority against the petitioner do not constitute a case of breach of public order and it can at the most be said that it is a breach of law and order. The detention order therefore, deserves to be set aside on this ground alone.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 28.4.1996 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside. The petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.

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